

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.402 of 2007

Nithiyanandam

.. Petitioner

Vs

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St. George, Secretariat
Chennai-600 009.

2. The District Magistrate
and District Collector
Krishnagiri
Krishnagiri District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein calling for the records in Connection with the order of detention passed by the 2nd Respondent dated 6.1.2007 in his office Ref.No.S.C. 53/2006 against the petitioner's brother Senthil @ Senthil Kumar, S/o Marugesan, now confined in Central Prison, Salem District and set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan
For Respondents: Mr.Paul Noble Devakumar
Government Advocate

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the brother of the detenu, Senthil @ Senthilkumar, son of Murugesan, who was incarcerated by order dated 6.1.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as Goonda, has preferred this writ petition for issue of a Writ of

Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 6.1.2007 in his Office Ref. No.S.C.53/2006 against the petitioner's brother, Senthil @ Senthilkumar, son of Murugesan, now confined at Central Prison, Salem, Salem District, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 6.1.2007 came to be passed based on the ground case said to have taken place on 10.12.2006 at about 9.00 a.m., on the basis of the complaint lodged by one Mohan before the Sub Inspector of Police, Kanthikuppam Police Station. According to the complainant, who was running a beeda stall at Kuruvinaianapalli, on 10.12.2006 at about 9.00 a.m., while he was engaged in business, two persons came to his shop, drank cool drinks and consumed cigarette and jarttha. When the complainant asked the two persons to pay the amount towards the purchases made by them, one among them threatened the complainant by taking a knife from the hip side and another person broke the glass bottles kept at his shop. On seeing this the public waiting for bus ran helter shelter for their safety. Enquiry revealed that the persons were the detenu herein and one Saravanan. The second respondent, taking note of this case as a ground case and finding that there are 15 adverse cases pending against the detenu for the offences punishable under Sections 379 and 394 IPC, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

3. Since Mr.E.Kannadasan, learned counsel for the petitioner challenges the impugned order of detention dated 6.1.2007 mainly on the ground of delay in considering the representation dated 15.2.2007 made on behalf of the detenu, we do not propose to go into the other aspects of the case.

4.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

4.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

4.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

4.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide *Tara Chand v. State of Rajasthan*, (1980) 2 SCC 321 and *Raghavendra Singh v. Supdt., Distt. Jail*, (1986) 1 SCC 650.

4.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide *Rajammal v. State of T.N.*, (1999) 1 SCC 417.

5. Coming to the the case on hand, admittedly, on receipt of the order of detention dated 6.1.2007, a representation was sent to the detaining authority through the Advisory Board on 15.2.2007, which was received by them on 19.2.2007, and remarks were called for on 19.2.2007 itself and the same was received on 23.2.2007, after four days. Parawar remarks were called for from the Sponsoring Authority on 27.2.2007. It is astonishing to notice from the records that the Sponsoring Authority took time from 27.2.2007 to 22.3.2007 (23 days) to submit its remarks to the Government, which is also not properly explained. Even taking note of the intervening public holidays, viz., 3.3.2007, 4.3.2007, 10.3.2007, 11.3.2007, 17.3.2007 to 19.3.2007 (7 days), the delay of sixteen days in sending the remarks to the Government is admittedly unexplained and inexcusable.

6. At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad*, (1996) 3 SCC 194 is apposite:

"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

7. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

8. In the instant case, there is delay of sixteen days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 6.1.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sasi

Sd/-
Asst. Registrar.

/true copy/

सत्यमेव जयते
Sub Asst. Registrar.

To:

1. The Secretary to Government
State of Tamil Nadu
Prohibition and Excise Department
Fort St. George, Secretariat
Chennai-600 009.

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2. The District Magistrate
and District Collector
Krishnagiri
Krishnagiri District.

3. The Superintendent, Central Prison, Salem.

4. The Joint Secretary to Govt,
State of Tamilnadu, Public (Law & Order) Department,
Fort St George, Chennai.

5. The Public Prosecutor, High Court, Chennai.

KK (co)

sg 23/8/07

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